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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1991

No. 91-1239

THE STATE OF TEXAS,

Petitioner,

v.

KERRY MAX COOK,

Respondent.

ON WRIT OF CERTIORARI TO THE
TEXAS COURT OF CRIMINAL APPEALS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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To the Honorable Justices Of The Supreme Court:

NOW COMES KERRY MAX COOK, Respondent, by and through his attorneys, and files this Brief in Opposition to State's Petition for Writ of Certiorari and in support thereof would respectfully show this Honorable Court as follows:

STATEMENT OF THE CASE

The Smith County prosecutors have been less than candid with this Court. While their Petition for Writ of Certiorari dwells on the gory specifics of the tragic death of Linda Jo Edwards, Smith County neglects to reveal that substantial new evidence has surfaced, since the Court remanded the case in 1988 for reconsideration in light of **Satterwhite v. Texas**, 486 U.S. 249 (1988), which strongly suggests that someone other than Respondent committed the murder.[1] Based on this new evidence, the Smith County Prosecutors have recently initiated a reinvestigation of the murder. Regardless whether it is technically appropriate to comment on the reinvestigation now initiated by Smith County, Respondent submits it is fundamentally unfair for the Smith County prosecutors to exploit Respondent's procedural inability to introduce new evidence at the appellate stages by asking this Court to reinstate a death verdict, when Smith County has compelling grounds to conclude that the record from Respondent's 1978 trial is not an accurate representation of the facts.[2]

The Smith County prosecutors also neglect to reveal that they obtained Respondent's 1978 conviction and death sentence with the aid of perjured testimony and through the

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[1] *See The Dallas Morning News*, February 23, 1992, contained in Appendix "A".

[2] In making its harmless error argument, Smith County does not simply rely on faulty evidence which formed the basis of Respondent's 1978 conviction, but points to the testimony of a psychologist, Gerald Landrum, who testified at the sentencing phase that Respondent would continue to be a threat to society. See Petition for Writ of Certiorari, page 5. Landrum based his testimony on his diagnosis and treatment of the Respondent prior to the murder. Smith County fails to reveal to this Court, however, that Dr. Landrum, unbeknownst to defense counsel, had prpared written reports regarding Respondent at the time of his evaluations and treatment which detailed how Respondent posed no problems of "undue aggressiveness" and that his prognosis was reported as "good with appropriate psychiatric care." Nor does the Petition for Writ of Certiorari reveal to this Court that the Smith County prosecutors failed to disclose these exculpatory reports.

suppression of evidence favorable to the defense. For example, a critical prosecution witness has admitted that he lied under oath at Respondent's trial when he testified that Respondent had made a "jailhouse confession." This State's witness admitted he had fabricated the evidence against Respondent, through subtle coaching by the assistant district attorney who prosecuted Respondent, in exchange for a secret plea bargain whereby Smith County would reduce the murder charge pending against the witness after Respondent's trial.[3]

The Smith County prosecutors have also failed to accurately reveal the record.[4] Petitioner's "Statement of Facts" neither quotes from nor cites the trial transcripts. Smith County's "Statement of Facts" contains such substantial omissions, distortions and editorialiations that Respondent is compelled to set forth in detail, along with citations to the record, the facts upon which this Court originally remanded the case and upon which the Texas Court of Criminal Appeals subsequently reversed Respondent's conviction and sentence of death.

STATEMENT OF FACTS

In the Spring of 1977, Linda Jo Edwards worked as a secretary at Texas Eastern University in Tyler. She had been romantically involved throughout the previous year with James Mayfield, the Dean of the University Resource Center. In May, 1977, Ms. Edwards

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[3]See Footnote 7, infra, and related text.

[4]For example, Smith County grossly mischaracterizes the extent to which the trial prosecutor relied on Dr. James Grigson's testimony during final argument at the punishment phase. Whereas the record reveals the prosecutor made repeated references to the psychiatrist's testimony in his argument for the death penalty, Smith County, in an apparent attempt to mislead this Court, claims that the trial prosecutor made only "a passing reference" to Dr. Grigson's testimony. See Petition for Writ of Certiorari, page 16.

needed a new residence, so arrangements were made for her to live temporarily with Paula Rudolph, who worked under Mayfield at the university. Ms. Rudolph lived in an apartment complex called the "Embarcadero" in Tyler, Texas. It was there that Ms. Edwards died in the early morning hours of June 10, 1977. (Tr. 464-66, 495) (Tr. of Deposition of James Mayfield, Feb. 1, 1978, at 10-15)[5]

A. The Murder

The last person known to have seen Ms. Edwards alive, other than the assailant, was Paula Rudolph. On the night of the homicide, Rudolph was at home when Edwards arrived there at 9:30 p.m. The two women chatted for a few minutes and then Edwards stepped outside. Ms. Rudolph was preparing to leave for a date when Ms. Edwards returned at 10:15 p.m.. Edwards appeared cheerful and told Rudolph that she had just met some friends at the tennis courts by the complex. Rudolph soon left to meet her friends. It appeared to her that Edwards was preparing to return to the tennis courts. (Tr. 463-76)

Edwards apparently was killed before Rudolph returned home at 12:30 a.m..[6] Upon arriving at the apartment, Rudolph found the front door unlocked. As she stepped inside, she momentarily saw a man standing to her left, inside Edward's bedroom. The man

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[5]In this pleading, the transcript of the trial and the record of written motions and orders are referenced respectively as "Tr." and "R." followed by page numbers. Pre-trial hearings and depositions are referenced by the nature and date of the hearing followed by page numbers.

[6] In a statement given to the police on the morning after the murder, Ms. Rudolph stated that she had arrived home at "about 12:30 a.m.." (Tr. 515) At trial, she instead testified that it was probably between 12:35 and 12:45 a.m. when she arrived home that evening. This change in her account was important because another witness for the State, Robert Hoehn, testified that he had been with Respondent until he had dropped him off at the apartment complex and that Hoehn was sure that he did not drop Respondent off before 12:30 or 12:35 a.m.. (Tr. 714-15, 718)

whirled and shut the bedroom door. Rudolph saw him only for a moment while he was silhouetted in the bedroom light. Rudolph "could not see [his] facial features." However, she noticed that he had "silver hair" that was cut in a "touching-the-ears fashion" and that he was wearing white briefs or shorts. He was slender, caucasian, and had a tan. Because he looked like James Mayfield, with whom Rudolph knew Edwards was involved, she was unconcerned. Indeed, Rudolph called out, "Don't worry, it's only me," and proceeded to her bedroom on the opposite side of the apartment. A few minutes later, she heard the sliding glass door to the patio open and close. She assumed it was James Mayfield leaving. (Tr. 513-18)

Rudolph found Edwards' body in the middle of Edwards' bedroom floor at 7:00 a.m. the next morning. Edwards had been stabbed with a knife and scissors in several places on her torso, including her vaginal area, and also in the neck. Her body also had been mutilated in several places. (Tr. 846-84) Apparently, Edwards had been unconscious when these injuries were inflicted, having been first knocked out by several blows to the head. (Tr. 855, 878-90, 881) The number of injuries suggested that the assailant had needed several minutes to have committed the crime; the wounds to the lower body alone probably took "five to ten minutes." (Tr. 877)

Upon discovering Edwards' body, Rudolph called the police. That same morning Rudolph gave police officers the above-noted description of the apparent assailant and told them, based on her observations, that she had assumed that it had been James Mayfield. (Tr. 513-18)

B. Respondent's Arrest

The police did not arrest anyone for the offense for nearly two months. On August 4, 1977, the police determined that a single fingerprint that they had discovered on the outside of Rudolph's patio door matched the middle finger of Respondent's left hand. (Tr. 254-62) The police also learned that Respondent had been staying at the apartment of a friend in the Embarcadero complex during the time of the homicide. Respondent did not fit the description of the apparent assailant provided by Rudolph, however. While the man that Rudolph described had "silver hair" in a "touching-the-ears fashion", Respondent had long black hair that reached his shoulders. (Tr. 708) Nonetheless, the police arrested and charged Respondent with capital murder on August 5, 1977.

C. The Guilt-Innocence Trial

The prosecution's case at trial centered on the testimony of Edward Scott Jackson, an inmate from the Smith County Jail. Jackson testified that in the fall of 1977, he and Respondent, Kerry Max Cook, had been locked up in the same cell and that Cook had bragged that he had stabbed and mutilated Edwards. Cook supposedly also expressed concern that a woman had seen him in Edwards' apartment. Jackson denied that he had a bargain with the prosecution involving his testimony against Respondent, although Jackson was also charged with murder based on an unrelated homicide. (Tr. 729-34, 744)

The prosecution also introduced evidence that a fingerprint identified as Respondent's had been found 56 inches from the ground on the outside of the patio door to Rudolph's apartment. No prints identified as Respondent's were found inside Rudolph's apartment, however. Additionally, the State's fingerprint "expert" revealed for the first time under

cross-examination that the police had lifted a latent fingerprint, which did not belong to Respondent, from the bloody scissors used to stab Edwards. (TR. 248-79, 424)

The prosecution also called Richard Hoehn who testified he had been at the Embarcadero apartment complex with Mr. Cook on the night of the murder. Hoehn, a homosexual, had gone to visit Respondent at the complex around 10:30 that night. Respondent had been staying at the apartment of a friend, James Taylor, who was out of town. When Hoehn arrived at Taylor's apartment, a movie was playing on T.V. called "The Sailor Who Fell From Grace With The Sea." Hoehn and Cook watched the movie for a few minutes and then walked to the Embarcadero swimming pool. After 20 minutes, they returned to Taylor's apartment. There they talked and drank beer. The movie was still playing on T.V. After a few minutes, the two began to have homosexual sex. This act was completed shortly after the movie ended at midnight. Hoehn then drove Cook to a store to pick up cigarettes, dropping him off again at the apartment complex at 12:30 to 12:35 a.m. (Tr. 714-15) According to Hoehn, Respondent had been wearing dark blue long pants with blue and red underwear. (Tr. 708,715) Hoehn remembered the color of the underwear because respondent commonly wore them. (Tr. 708) Hoehn was also unequivocal that Respondent had not been wearing white shorts that night and that he had never before seen Respondent wear white shorts. (Tr. 717) Hoehn's testimony that Respondent had been wearing dark blue long pants with blue and red underwear suggested Respondent was not the man with "silver hair" in a "touching-the-ears fashion" and wearing white shorts that Paula Rudolph had seen in Edwards' bedroom.

Despite her statements the morning after the murder that the man in Edwards' bedroom had "silver hair" in a "touching-the-ears" fashion, and that she thought he was James Mayfield, Paula Rudolph testified at trial one year later that Mr. Cook was actually the man she had seen in Edwards' bedroom. Rudolph claimed at trial, contrary to her initial statements to the police, that the man in the bedroom had not looked like Mayfield. She claimed that her memory of the assailant's appearance had improved with time. While acknowledging at trial that Respondent had black hair, she claimed that the light in the bedroom behind the man must have cast a "silver reflection" off of his head. Rudolph was not asked to explain the major discrepancy in her testimony: her description of the assailant's "touching-the-ears" hair length while Respondent had long hair which reached his shoulders. Rudolph also did not attempt to change her previous description of the assailant's white shorts. (Tr. 490-539)

The defense called several inmates from the county jail. Their testimony was offered to undermine Edward Scott Jackson's claims concerning the purported jailhouse confession. Two inmates testified that Jackson had admitted to them before trial that he was going to lie against Respondent. Jackson also told a third inmate that, in exchange for his testimony, the prosecutor had agreed to let him plead guilty to manslaughter and to receive a sentence of two years, which would effectuate his release almost immediately after Respondent's trial.[7]

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[7] As noted by Judge Sam Houston Clinton of the Texas Court of Criminal Appeals, the Smith County Court documents reveal that after the conclusion of Respondent's trial, Smith County prosecutors gave Jackson the precise plea bargain that Jackson had bragged to fellow inmates that he would receive. Judge Clinton additionally notes that Jackson recanted his testimony against Respondent after his release. The assistant district attorney who made the secret plea bargain with Jackson is the same attorney who had prosecuted Respondent. This prosecutor committed suicide three months after Respondent's trial. See **Cook v. State**, 741 S.W.2d 928, 947 n.3, 954-55 (Tex.Crim.App. 1987) (Clinton, J. dissenting); *The Dallas Morning News*, February 23, 1992.

D. The Sentencing Trial

Smith County relied heavily upon the testimony of Dr. James Grigson to secure a death sentence for Mr. Cook.[8] Dr. Grigson is a psychiatrist known widely as "Dr. Death."[9] He travels from county to county at the rate of $150.00 per hour testifying for local Texas prosecutors that the particular Defendant at issue is a sociopath, will pose a threat of "future dangerousness," and should therefore be sentenced to death. Before trial, Dr. Grigson had interviewed Mr. Cook for about an hour and a half in the Dallas County Jail. Grigson interviewed Respondent to develop evidence he could use to establish Respondent's "future dangerousness" under the second question in the Texas capital sentencing scheme. The trial court did not order the interview and neither the prosecutor nor Dr. Grigson gave notice to defense counsel. Respondent was simply transported to Dallas

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[8]While Smith County refers to "Dr. William Grigson's testimony on future dangerousness" in their Petition for Writ of Certiorari, the record will reflect that the state's only psychiatrist at the punishment phase of Respondent's trial was Dr. James P. Grigson, not a Dr. "William" Grigson. See Petition for Writ of Certiorari, page 10. To avert any confusion by the Court, any reference by Smith County to a Dr. "William" Grigson should be understood to mean Dr. James Grigson.

[9]See e.g., **Bennett v. State**, 766 S.W.2d 227, 231 (Tex.Crim.App. 1989) (Teague, J. dissenting) ("...Dr. James P. Grigson, who has earned the nickname of 'Dr. Death' because of the number of times he has testified on behalf of the state..."); **Holland v. State**, 761 S.W.2d 307, 319 n.6 (Tex.Crim.App. 1988) ("...Grigson has a nickname of 'Dr. Death'..."); **American Journal of Law & Medicine**, Vol. 8 No. 4 (1982-83), *"Dr. Death and the Case for an Ethical Ban on Psychiatric and Psychological Predictions of Dangerousness in Capital Sentencing Proceedings"*; **The Boston Phoenix**, December 21-27, 1990, *"Burying Dr. Death"*; **Vanity Fair**, May, 1990, page 141 *"Travels With Dr. Death--Dr. James Grigson, a.k.a. "the hanging shrink," is a traveling salesman for the Texas death penalty. His lethal court testimony has sent 118 convicted murders to death row. Ron Rosenbaum crosses the prairie with Dr. Death as he notches up three death sentences - two in one day"*; **Dallas Morning News**, September 19, 1991, page 1A, *"Cook conviction overturned ("Dr. Grigson--whose frequent and effective testimony in death penalty cases has earned him the nickname 'Dr. Death'..."*); **Dallas Morning News**, September 19, 1988, page 1C, *The Life of Dr. Death* ("[N]ot everyone calls [Jim Grigson] Dr. Death, just defense attorneys, some judges, the media, a lot of those on Texas' death row and most people opposed to the death penalty.")

and interviewed by Dr. Grigson at the sole direction of the prosecutor. Dr. Grigson also failed to advise Mr. Cook of his **Miranda** rights before the interview.

Dr. Grigson testified for the prosecution in a manner almost verbatim to his testimony in **Estelle v. Smith**, 451 U.S. 454 (1981)(reversing death sentence) and **Satterwhite v. Texas**, 486 U.S. 249 (1988)(reversing death sentence). He explained that he had conducted a "psychiatric examination" of Respondent that lasted approximately an hour and a half. Based on this interview, though without any specific articulation of the reasons for his conclusions, Dr. Grigson testified that Respondent was a sociopath, a man without conscience who would go on throughout life performing violent acts in his own self-interest. Moreover, Dr. Grigson was "absolutely one hundred percent certain" that from "a medical psychiatric standpoint," Respondent would present a danger to others whether he was living in society or was incarcerated. Likewise, according to Dr. Grigson, Respondent was as bad as a sociopath could be--"at the very end [of the scale], the very most severe where you will find of the sociopath"--and therefore could not get any worse; but he could not get any better either, because the sociopath did not suffer any illness but, instead, an enduring defect of personality. (Tr. 1200-1209) There was no other evidence nearly so damaging and forceful as that of Dr. Grigson to indicate that Respondent would likely commit further acts of criminal violence.

As in **Satterwhite**, the prosecution called a psychologist who also testified that Respondent possessed an anti-social personality and posed a danger. Unlike Dr. Grigson, however, the psychologist, Dr. Jerry Landrum, was not a medical doctor. Furthermore,

Landrum admitted that it may have been up to three years since he had even interviewed Respondent.

The prosecution called a number of witnesses who testified that Respondent had a bad reputation for being a "peaceful and law-abiding citizen". However, none of these witnesses indicated that Respondent had a reputation specifically for committing acts of violence. Moreover, the prosecution did not prove a single prior violent act committed by Respondent. Respondent's only prior conviction was for theft of a car.

The defense called no witnesses at the sentencing phase.

The record reveals that in his opening summation at the sentencing phase, the prosecutor immediately began a psychoanalytic discourse relying, in part, on Dr. Grigson's testimony:

> ". . .[B]ut probably the saddest portion of this whole affair is that you cannot feel sorry for people like Kerry Max Cook because they won't accept your sorrow. They will break down in tears under the appropriate occasion and they will blame their problems on other people; they will shift the burden of their responsibility in life in any direction except toward themselves. You heard the psychiatrist and the psychologist tell you they have no sense of social conscience and they will evoke your sorrow, they will reach for your sympathy and your pity and use it for the expediency of the moment. When that moment is gone and when that necessity is gone for it, they revert to their pattern of conduct in life"

(Tr. 1242)

The prosecutor soon returned to his opening theme--the psychoanalytic condition of Respondent--again relying, in part, on Dr. Grigson's testimony:

> ". . . .[To ask ourselves is that right or wrong] is totally absent from the mind of Kerry Max Cook. You have heard a professional psychiatrist with many, many years of experience.

> You have heard a professional psychologist with ten years experience in evaluating dangerous human behavior come in the Courtroom. Now, there are many, many members of both [professions] the Defense team could have hired to analyze Kerry Max Cook, if there was a possibility of producing a professional opinion that would have been favorable to Kerry Max Cook, but there was none. . . . Now, the reason [none] was called . . . is that evidence doesn't exist, Kerry Max Cook is what he is. He is a living part of human tragedy."

(Tr. 1247-1248).

After arguing that Respondent should be executed and pointing to the psychologist's testimony that he could not be rehabilitated, the prosecutor returned to focus on Dr. Grigson's psychiatric testimony:

> "You heard Dr. Grigson, a very professional man tell you about the categories involved in psychiatric evaluations. Didn't you hear something in every one of those categories that applied to Kerry Max Cook?...
>
> He said a person who freeloads off of society the world owes him a living. The facts of the evidence in this case shows that is exactly Kerry Max Cook, he is mooching off everybody, room and board, cigarettes, beer, whoever he could hustle into paying his way in life. He said it is a mind who has no social responsibility in any form or fashion. Kerry Max Cook all over again the first time. The second time you saw all over the wall of this Courtroom, no social responsibility whatsoever. He has no conscience. Dr. Grigson told you that the man was impossible to rehabilitate, that he was not susceptible to rehabilitation, that he could not begin to understand what the term was.

(Tr. 1256-1257).

In rebuttal summation, the prosecutor again emphasized the importance of the mental health testimony, including that of Dr. Grigson, to its case under special issue two:

> ". . . Who knows the answer to this question, but when we are confronted with these set of facts in an area we do not understand, human behavior, we rely on experts. . . . and in this we relied on experts in this case. We said give us your judgment in this case, and

> they have done so. They were not impeached in any form, they were not rebutted in any form and do you think that they would derive any morbid pleasure in telling you that you have no other alternative other than to send a man to his death or he is going to hurt somebody or endanger everybody around you."

(Tr. 1273-1274). The prosecutor concluded his closing arguments by pointing again to the diagnosis of the mental health experts that Respondent was a "sociopath," and for that reason should be executed rather than be given a life prison sentence:

> ". . . . That is the situation in this case. Kerry Max Cook has a disease, it is sociopathic and a psychopathic disease and the young man must be put to sleep. That is the only alternative, the only solution to the problem posed . . . ."

(Tr. 1274-1275)

I.

THERE ARE NO SPECIAL AND IMPORTANT REASONS TO GRANT THE WRIT

While the Smith County prosecutors disagree with the decision of the Texas Court of Criminal Appeals which reversed Respondent's conviction and death sentence, the Petition for Writ of Certiorari fails to set forth, as required by Rule 10 of the Supreme Court Rules, in what manner Texas' highest court with criminal jurisdiction has: "decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;" or "decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this court." Rule 10.1(b) and (c), Supreme Court Rules.

In essence, the two reasons for review proffered by Smith County can be characterized as follows: (1) Smith County simply disagrees with the established principle of constitutional law, set forth in **Griffith v. Kentucky**, 479 U.S. 314 (1987) and reiterated in **Penry v. Lynaugh**, 492 U.S. 302 (1989), that "new" rules of criminal procedure will be applied to cases still pending on direct review; (2) Smith County simply disagrees with the decision by the Texas Court of Criminal Appeals that it was not harmless error, under **Satterwhite v. Texas**, 486 U.S. 249 (1988), for the prosecution to introduce against Respondent at the sentencing phase of his capital murder trial, the testimony of a medical doctor, Psychiatrist James Grigson, in violation of Respondent's Fifth and Sixth Amendment rights, that Respondent was "the very most severe [that] you will find of the sociopath" with a "complete disregard for another human being's life" and that he was "absolutely 100% certain," that from "a medical psychiatric standpoint" Respondent would commit future acts of violence "whether he was free in a free world or whether he was institutionalized." As explained below, neither of these reasons constitutes a special and important reason for a review on writ of certiorari.

II.

SMITH COUNTY'S CONTENTION THAT THIS CASE POSES AN UNRESOLVED ISSUE CONCERNING THE RETROACTIVE EFFECT OF **ESTELLE V. SMITH**, 451 U.S. 477 (1981) IS WHOLLY WITHOUT MERIT

As the style of this case reveals, the parties are still before this Court on direct review, not on appeal from a habeas corpus ruling. Consequently, it is without question that Mr. Cook is entitled to the benefit of the holding in **Estelle v. Smith**, 451 U.S. 477 (1981). Whether **Smith** established a "new" rule or only reiterated the holding in **Miranda v.**

Arizona, 384 U.S. 436 91966), Mr. Cook is entitled to the same relief that Smith received simply because Mr. Cook's case is still on direct appeal.

This Court's pronouncements on this issue could not be clearer. In **Griffith v. Kentucky**, 479 U.S. 314 (1987), the Court laid down a blanket rule that even "new" rules of criminal procedure will be applied to cases still pending on direct review even if the rule was first announced by this Court after the inmate's trial. The **Griffith** Court explained that the "failure to apply a newly declared constitutional rule to criminal cases pending on direct review violates basic norms of constitutional adjudication." 479 U.S. at 322. The Court reiterated this per se rule in **Penry v. Lynaugh**, 492 U.S. 302 (1989). Moreover, this Court's reversal of the conviction and death sentence in **Satterwhite v. Texas**, 486 U.S. 249 (1988) demonstrates that one whose conviction has not become final is entitled to the benefit of the holding in **Smith** even if his trial occurred before the Smith decision issued. Satterwhite's trial terminated before this Court's decision in **Smith**, but this Court nonetheless reversed Satterwhite's death sentence based on the earlier decision. Smith County's suggestion that this case presents a significant issue about the retroactive effect of Smith v. Estelle is utterly vacuous.[10]

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[10] It should be noted that the State made no argument against the application of the Satterwhite decision when the case previously came before this Court on Respondent's petition or before the Court of Criminal Appeals after this Court remanded for reconsideration in light of the Satterwhite decision.

III.

CERTIORARI IS INAPPROPRIATE HERE BECAUSE THIS CASE TURNS EXCLUSIVELY ON ITS UNIQUE FACTS, AS TO WHICH THE FINDINGS OF THE TEXAS COURT OF CRIMINAL APPEALS ARE PLAINLY CORRECT

The opinion by the Texas Court of Criminal Appeals reversing Respondent's conviction and death sentence constitutes nothing more than the application of the harmless error principle, reiterated by this Court in Satterwhite v. Texas, 486 U.S. 249 (1988), to the facts of Respondent's case. Indeed, when this case previously came before this Court on a petition filed by Respondent, the Attorney General for Texas conceded that the then-recent Satterwhite decision controlled the case and that this Court should reverse and remand for reconsideration of the facts by the Texas courts in light of Satterwhite. In reversing Respondent's death sentence, the Texas Court of Criminal Appeals has done nothing more than the task previously proposed by the State and previously ordered by this Court. The Smith County prosecutors fail to offer any legitimate reason why this Court should now review the decision of the Texas court. The conclusion of the Texas Court of Criminal Appeals that Satterwhite mandates reversal is absolutely correct. More importantly, the question whether the Court of Criminal Appeals correctly decided such a fact-bound issue simply raises no legal issue justifying a review on writ of certiorari.

Review of the opinion by the Texas Court of Criminal Appeals is not worthy of this Court's attention. First, the decision of the Texas court is not of any widespread significance. Because the decision turned on the particular facts of Respondent's case, the decision will affect few, if any, other litigants. Additionally, the opinion of the Texas Court of Criminal Appeals simply presents no new legal question. This Court in Satterwhite issued

a unanimous opinion articulating the proper application of the harmless error test to the very kind of constitutional error that occurred in Respondent's case and in an almost identical factual context. Indeed, when this case previously came before the Court, the parties agreed, and this Court concluded, that the Satterwhite decision controlled this case. No contribution to the jurisprudence of criminal procedure will result from the Court granting certiorari to review a decision that presents the same issue raised in Satterwhite in essentially the same factual setting.[11]

Further, though perhaps beside the point, the Texas Court of Criminal Appeals correctly concluded that the constitutional violation in Respondent's case was not harmless error. In Satterwhite, this Court reversed Satterwhite's death sentence based on the improper introduction of Dr. Grigson's testimony at the inmate's capital sentencing trial. Like

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[11]In reversing Respondent's conviction and death sentence, the Texas Court of Criminal Appeals noted that **Satterwhite** and Mr. Cook's case are virtually identical:

> The error in **Satterwhite** and herein are remarkably similar. In both **Satterwhite** and **Cook**, the following facts are present:
> 1) Dr. James Grigson, a well known and experienced psychiatrist, examines the appellants without notice to their defense counsels.
> 2) Dr. Grigson is permitted to testify on future dangerousness at the punishment stage over defense objections.
> 3) A second expert who is a psychologist by training with considerably less experience than Dr. Grigson also testifies on future dangerousness. This testimony is admissible.
> 4) In each trial, Dr. Grigson's testimony is clearly more resolute and explicit than that of the psychologist.
> 5) Dr. Grigson's testimony is alluded to in final argument by the State with emphasis on the future dangerousness issue. The testimony of the psychologist in each case is also referred to in final argument.
> 6) Both appellants are given the death penalty by each jury.
> 7) Dr. Grigson's testimony is subsequently held to be in violation of each appellant's Fifth and Sixth amendment rights. The Supreme Court fashioned the issue in **Satterwhite** as follows: "[t]he question in this case is whether it was harmless error to introduce psychiatric testimony obtained in violation of that safeguard [Sixth Amendment] in a capital sentencing proceeding." **Satterwhite**, 108 S.Ct. at 1795. We are confronted again with the same issue.
> **Cook v. State**, 821 S.W.2d 600,601 (Tex.Crim.App. 1991)

Satterwhite, Dr. Grigson also testified at the punishment phase of Respondent's trial. The need for reversal is just as compelling in Respondent's case as it was in **Satterwhite**.

The relative importance of Dr. Grigson's testimony compared to other admissible evidence is essentially identical in the two cases and the force of Dr. Grigson's testimony in each of the cases is virtually indistinguishable, at least as it appears from the cold record. The following excerpts from the punishment stage of Respondent's trial demonstrate the extreme and unequivocal force of Dr. Grigson's testimony:

> Q. Are there different degrees of sociopaths?
>
> A. Oh, yes, sir, there are.
>
> Q. Would you relate those degrees to the Jury, or is it possible to do so?
>
> A. Yes, sir. It is. You have those sociopaths that you might say are relatively mild with regard to the type of rules, regulations [sic] which they break. Then you can sort of move up the ladder to individuals that break more serious rules. Then at the very end of the scale you have those individuals that have complete disregard for another human being's life. So you go from what you might say a mild sociopath to a very severe sociopath.
>
> Q. Where would you place the Defendant, Kerry Max Cook, on that scale, Doctor?
>
> A. At the very end, the very most severe where you will find of the sociopath.
>
> Q. Is that the person that you were testifying that had no regard for human life whatsoever?
>
> A. Yes. It certainly is complete disregard for another human being's life.

Q. Based on your diagnosis, Doctor, were you able to form an opinion as to whether or not there is a probability that the Defendant, Kerry Max Cook, will commit continuing acts of violence constituting a continuous threat to society?

A. Yes, sir. I formed an opinion to that.

Q. Would you tell the Jury your opinion?

A. It's my opinion that Mr. Cook certainly will, from a medical psychiatric standpoint probability, continue to behave and act in a way that does represent a very serious threat to the people within our society.

Q. Doctor, you say "to the people within our society", would this entail the prison society too, would it entail a continuing threat, say, for example, prison guards and fellow inmates?

A. It would not matter where he might be, whether he was free in a free world or whether he was institutionalized. He would present a real threat to people that found themselves in that same setting with him, whether it is prisoner guards or rather free people.

Q. How severe do you feel that this threat would be to other people from Kerry Max Cook regardless of where he was?

A. It is extremely severe. You can't come any more severe than that.

Q. Is there any doubt in your mind, Doctor, that this Defendant will constitute a continuing threat to other people who are around him regardless of where he is? Is there any doubt in your mind whatsoever?

A. If I had the least doubt, if I had any question within my mind, I certainly would not mind telling you that. I feel absolutely one hundred percent certain that he is and will continue to be a threat no matter where he is.

(Tr. 1209)

The foregoing testimony of Dr. Grigson was extremely damaging to Respondent's case and certainly as forceful as Dr. Grigson's testimony in Satterwhite. In terms of harm to

the defense, it is not possible to distinguish the two accounts. While Dr. Grigson did not explicitly testify that Respondent was "beyond the reach of rehabilitation," as he had done in **Satterwhite**, anyone capable of drawing only simple inferences understood that Dr. Grigson was saying that Respondent was a lost cause. (Of course, in addition to the testimony excerpted above, Dr. Grigson already had testified that Respondent's sociopathy was "not a disease," but rather a defect of "personality" characterized by the "absence of a conscience.") Any doubt which may have existed as to whether Dr. Grigson considered Respondent beyond rehabilitation was quickly dispelled by the prosecutor when he stood up in closing argument and hammered that very point home, without objection: "He has no conscience. Dr. Grigson told you that the man was impossible to rehabilitate, that he was not susceptible to rehabilitation, that he could not begin to understand what the term was." (SF, 1257) There is no question but that Dr. Grigson's testimony in Respondent's case was every bit as devastating to the defense as his testimony had been in Satterwhite.

Apart from Dr. Grigson's forceful testimony, there was also as much, if not more, compelling evidence of future dangerousness introduced in the Satterwhite case as in the Respondent's case. At the punishment trial in both **Satterwhite** and Respondent's case, a psychologist testified for the state, in addition to the medical doctor, Dr. James Grigson. The testimony of the psychologist in Respondent's case was no more powerful than that of the psychologist who testified in Satterwhite. The psychologist in Satterwhite gave testimony that was equally persuasive, if not as hyperbolic, as that of Dr. Grigson. Her prediction that Satterwhite would commit future acts of criminal violence was supported by numerous interviews with Satterwhite in conjunction with very extensive psychological testing. (See

State v. John T. Satterwhite, Tr. 2644-2657). In the instant case, the psychologist described Respondent' s sociopathy simply as "severe" and testified that there was a "high probability" that he would act out in a harmful manner. (Tr. 1220-1223) The psychologist admitted, however, that as many as three years may have passed since he had even examined Respondent. (Tr. 1223) It is only fair to assume that this point undermined the force of the psychologist's assessment in the mind of a rational juror. Accordingly, it appears that the testimony of the psychologist at Respondent's trial was no more compelling than the testimony of the psychologist who testified in Satterwhite.

Smith County is disingenuous in arguing that the circumstances of the murder in this case distinguish it from the murder in Satterwhite. Both murders were cruel and vicious. On the future dangerousness scale, it cannot reasonably be maintained that one crime evinces a less dangerous actor than the other. Furthermore, even if there were some meaningful distinction between the murders in the two cases as regards the issue of future dangerousness, any distinction would be overwhelmed by the major difference between the prior criminal records of the two defendants. Respondent had only one prior conviction for auto theft, and there was no evidence that he had ever committed a prior violent act. Satterwhite, in contrast, had a longstanding history of violent behavior including four prior felony convictions ranging from aggravated assault to armed robbery. Satterwhite had also tried to shoot his stepfather, and at the time of his arrest for the capital murder, attempted to pull a pistol and kill the arresting officers. In comparing the two cases in its Petition for Writ of Certiorari, Smith County makes no mention of the significant distinction in the prior criminal histories of Satterwhite and Respondent. Yet, how could Smith County, if it were

seeking to present this case in an accurate fashion, simply ignore this major distinction which weighs so clearly in Respondent's favor?

A review of the records in the two cases also reveals that the prosecutor in Respondent's case relied more heavily on Dr. Grigson's testimony in his final argument than did the prosecutor in Satterwhite. In Satterwhite, the Prosecutor's argument made only a single reference to the testimony of either Dr. Grigson or the psychologist:

> So your District Attorney's Office as a result of what he did to Mary Davis on March 12th, 1979 has this man examined by a person who works for Bexar County, Betty Lou Schroeder. Dr. Betty Lou Schroeder and she finds that this man has an antisocial personality disorder. And she tells you under oath, ladies and gentleman, based on her experience, based on her opinion that this man is a continuing threat to our society.
>
> The District Attorney's office seeks another opinion, Doctor James Grigson, Dallas psychiatrist and medical doctor. And he tells you that on a range from 1 to 10 he's ten plus. Severe sociopath. Extremely dangerous. A continuing threat to our society. Can it be cured? Well it's not a disease. It's not an illness. That's his personality. That's John T. Satterwhite.

Texas v. John T. Satterwhite, (Tr. 2725-2726). As previously set forth, the Smith County prosecutor made extensive references to Dr. Grigson's testimony in arguing for the death sentence against Respondent. See text supra at p. 11-13.[12]

The Court should not overlook the fact that it was no other than Dr. James P. Grigson who testified against both Respondent and Satterwhite. Dr. Grigson's persuasive

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[12]Smith County prosecutors blatently misrepresent the record when they state on page 16 of their Petition for Writ of Certiorari that the prosecutor made only "a passing reference" to Dr. Grigson's testimony during closing argument.

skills on the witness stand are legendary. This Court is well-aware that he has testified in numerous death penalty cases, for the Court has granted review in three of them in which his testimony was the subject of constitutional dispute.[13] See Estelle v. Smith, supra, 451 U.S. at 454; Barefoot v. Estelle, 463 U.S. 880 (1983); Satterwhite v. Texas, supra, 486 U.S. at 249. Moreover, Dr. Grigson's skill in the art of jury persuasion is "well-known to every experienced practitioner in capital cases." Satterwhite v. State, 726 S.W.2d 81, 95 (Tex. Cr. App. 1986) (Clinton, J., dissenting). As Dr. Grigson himself has been quoted: "I've been on the witness stand a lot of times, and I've been asked every question you can think of. I know what I'm doing."[14] Because it was the "inimitable" Dr. Grigson, Satterwhite v. State, supra, 726 S.W.2d at 95 (Clinton, J., dissenting), who testified against Respondent, the issue before the Court of Criminal Appeals was unquestionably answered by this Court's ruling in Satterwhite.[15]

The Texas Court of Criminal Appeals correctly concluded after a careful review of the facts that the admission of Dr. Grigson's testimony at the sentencing trial, in violation of Respondent's Fifth and Sixth Amendment rights, required reversal under Satterwhite. Dr. Grigson's testimony against Respondent, as in Satterwhite, was powerful and unequivocal on

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[13] By May, 1990, Dr. Grigson had testified for the prosecution against 124 capital murder defendants; and in 115 of those cases a sentence of death was imposed. **Vanity Fair, supra,** at 142. A Dallas Times-Herald article of September 30, 1979, p.1, stated that there had been 22 capital murder trials in Dallas County by that point. "Dr. Grigson testified for the prosecution in every case. Only one defendant escaped death row."

[14] American Lawyer, November 1979, pp. 25-26.

[15] By telling jurors that Respondent's future dangerousness was a "medical psychiatric" question about which he was "absolutely 100 percent certain" (Tr. 1209), Dr. Grigson was relieving the jurors of a huge burden of decision. As Dr. Grigson himself has been quoted: "I think the jurors feel a little better when a psychiatrist says it -- somebody that's supposed to know more than they know." American Lawyer, November, 1979, pp. 25-26.

the "future dangerousness" issue. In Respondent's case, just as this Court found in Satterwhite, it is "impossible to say beyond a reasonable doubt" that this expert testimony "did not influence the sentencing jury." Satterwhite, supra, 486 U.S. at 260.

CONCLUSION

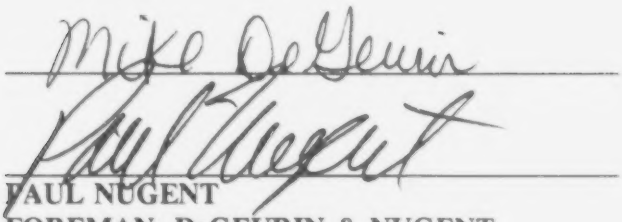
There are no special and important reasons to grant Smith County's Petition for Writ of Certiorari. The decision by the Texas Court of Appeals properly applied the harmless error principle, reiterated by this Court in **Satterwhite v. Texas**, Supra, to the specific facts of Respondent's case.

The Texas Court of Criminal Appeals did not decide a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals. Nor did the Texas Court of Criminal Appeals decide an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Respondent, **KERRY MAX COOK**, respectfully prays that this Court refuse to grant Smith County's Petition for Writ of Certiorari.

Respectfully submitted,

MIKE DeGEURIN
Counsel of Record



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AFFIDAVIT

STATE OF TEXAS)
)
) ss.
)
COUNTY OF HARRIS)

MIKE DeGEURIN, a member of the Bar of the United States Supreme Court, being duly sworn upon oath, deposes and says:

I served a copy of the Brief in Opposition to the Writ of Certiorari upon Jack Skeen, Jr., Counsel for Petitioner, by depositing the same in the United States Mail, with first class postage prepaid, addressed to Jack Skeen, Jr., Criminal District Attorney, 403 Smith County Courthouse, Tyler, Texas 75702.

DATED this 5th day of March, 1992.

Mike DeGeurin

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SUBSCRIBED AND SWORN to before me
this ___ day of March, 1992.

NOTARY PUBLIC

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Police question former lover of slain woman in Cook case

Ex-suspect has alibi in grisly 1977 East Texas killing

By David Hanners
Staff Writer of The Dallas Morning News

TYLER — Smith County prosecutors recently questioned a man once considered the prime suspect in a 1977 mutilation slaying of a Tyler woman, a crime for which another man — Kerry Max Cook — was sentenced to die.

James L. Mayfield, 56, of Houston, was questioned in Tyler in December, and he has agreed to take a lie-detector test, said Smith County Assistant Criminal District Attorney David Dobbs.

Mr. Dobbs said he wanted to question Mr. Mayfield and "he voluntarily came up and met with us (and) cooperated with us."

■ Different stories. 18A

Prosecutors also are studying a textbook on sex crimes that people who were interviewed have linked to Mr. Mayfield, *The Dallas Morning News* has learned.

Mr. Mayfield once headed the library at what is now the University of Texas at Tyler. In a 1978 sworn deposition, he acknowledged that he had an 18-month affair with the murder victim, Linda Jo Edwards, who had worked at the library.

Mr. Mayfield has declined to comment in the past and did not return calls for this article. His attorney,

Please see FORMER on Page 18A.

APPENDIX "A"

Former suspect questioned in Cook murder case

Continued from Page 1A.

F.R. "Buck" Files Jr. of Tyler, also declined to comment.

Mr. Cook, of Jacksonville, Texas, was convicted and sentenced to die for Ms. Edwards' murder, but he has always insisted that he is innocent. He may get another chance to prove it. The state's highest criminal appeals court reversed his conviction in September and ordered a new trial after ruling that his rights had been violated during his first trial.

An investigator who has studied the case said the 1949 textbook, *The Sexual Criminal* by Dr. James Paul de River, contains several graphic photos of women sexually mutilated in much the same way that Ms. Edwards was.

A killer could have "used this book as his 'how-to' book to brutally mutilate somebody as a way to lead the police astray, lead them into thinking that this must have been done by a sadistic, psychopathic killer," said James McCloskey, who heads Centurion Ministries Inc., an organization that investigates inmates' claims of innocence.

"It's chilling to look at the different wounds on Linda Jo Edwards and then compare them to different wounds on the female victims in that book," said Mr. McCloskey, who says he is convinced that Mr. Cook is innocent.

In separate sworn statements, two university employees link the book to Mr. Mayfield or the crime.

Psychology professor Dr. Frederick Myers said he noticed the book in the library several months before the murder and was told by staffers that it had been ordered by Mr. Mayfield.

Ann White, who worked at the library with Mr. Mayfield, said that a Tyler psychologist who aided police in their investigation showed the book to her after Mr. Cook's trial and pointed out similarities between photos in it and the killing of Ms. Edwards.

Ms. White said the psychologist told her that police had suspected Mr. Mayfield but were unable to disprove his alibi that he was at home with his wife and a 16-year-old girl that they raised as a daughter.

Pierce Brooks, a nationally respected homicide investigator who set up the FBI's Violent Criminal Apprehension Program, called the presence of the book in this case "a fascinating mystery."

"If some guy's using de River's book, he might be smart enough to (kill someone) and make it look like something else," said Mr. Brooks.

There have long been questions about Mr. Cook's conviction. Investigations by *The News* and, more recently, Centurion Ministries, have raised numerous questions about the thoroughness of the police investigation and the evidence against Mr. Cook.

Except for a questionable fingerprint, the state's case against Mr. Cook was made up largely of circumstantial evidence. Mr. Cook says he did not know Ms. Edwards. At his trial, only one witness linked the two, but that witness recanted his testimony a year later.

Numerous court and investigative documents, sworn statements and interviews with people who knew Mr. Mayfield and Ms. Edwards describe them as star-crossed lovers who couldn't live with or without each other.

Co-workers said Mr. Mayfield told them that Ms. Edwards had "ruined" him and that he feared she would follow him to Houston and "mess up my life again."

And although he told people that he had ended his affair with Ms. Edwards, witness statements and other documents show the two were together at least four times on the day and night she died.

Co-workers said Ms. Edwards told them that she was going to marry Mr. Mayfield. When they broke up, she vowed to one co-worker that she would do "anything" to get him back.

On the night of her murder, however, Ms. Edwards told two friends that Mr. Mayfield had become angry with her when she told him that she was going to start dating other men.

An early suspect

Mr. Mayfield became a suspect minutes after Ms. Edwards' roommate, Paula Rudolph, found the woman's body on the morning of June 10, 1977.

Ms. Rudolph — who had worked for Mr. Mayfield for two years — told police that she was coming home from a date about 12:30 a.m. when she opened the unlocked front door and saw a man who she believed was Mr. Mayfield in the doorway of Ms. Edwards' room. He turned and shut the door, she said.

Ms. Rudolph told police that she said, "Don't worry, it's only me" and went to bed. She said she discovered Ms. Edwards' sexually mutilated body the next morning.

People who worked at the library said the description that Ms. Rudolph gave to police matched Mr. Mayfield almost perfectly. Moreover, her description differs significantly from Mr. Cook's appearance.

A year later at Mr. Cook's trial, however, Ms. Rudolph was a key witness for the state, unhesitatingly testifying that Mr. Cook was the person she saw.

Mr. Mayfield, then 44, was a dean who supervised the university library. He was married and had three children but had been having an affair with Ms. Edwards, 21, for about a year and a half, he said in a sworn deposition in 1978.

The affair began in January 1976 after Ms. Edwards was hired as a clerk at the library. One of her co-workers said Ms. Edwards told her the month before her death that she and Mr. Mayfield were planning to wed.

"She said she was getting things together for just two people. She talked about an apartment they were going to get," said the co-worker, who has given a sworn affidavit to Centurion Ministries but asked that her name not be published.

According to records and witnesses, Mr. Mayfield left his wife on May 14, 1977, and moved into an apartment at the Embarcadero complex with Ms. Edwards. The arrangement was short-lived, however. On May 19, the Mayfields reconciled, and he returned home.

Later that evening, Ms. Edwards took an overdose of sleeping pills. Medical records say the suicide attempt was "a reactive response to feelings of rejection she had had from her boyfriend."

Mr. Mayfield discovered her the next morning and took her to the hospital. Upon her release May 26, Mr. Mayfield moved her belongings into the apartment of Ms. Rudolph, who also lived at the Embarcadero.

After the suicide attempt, Ms. Edwards was "deeply, deeply depressed," said La Dawn Weeks, a friend and co-worker. "She cried a lot. She moped around. She lost her interest in life. . . . She was just crushed."

A woman who worked with Ms. Edwards said that after the suicide attempt, Ms. Edwards was unable to concentrate on work.

"I said, 'What's going on?' or something, and she'd say, 'Well, I just got to get him back, no matter what,' " said the woman, who asked that her name not be used. "I said, 'Who are you talking about?' and she said, 'Mayfield.' "

Troubling affair

Mr. Mayfield's colleagues say he, too, seemed torn, expressing anger over the affair — particularly when he lost his job because of it — but also apparently unable or unwilling to break it off.

One former librarian said in a sworn statement to Centurion Ministries that Mr. Mayfield quickly got a lead on a job near Houston but expressed worries that Ms. Edwards might follow him.

"He told me, 'You know, her sister . . . lives in Conroe,' " the woman recalled in an interview, referring to a northern suburb of Houston. "And he was going to Houston. He said, 'I'm going down there. She'll follow me. She'll mess up my life again.' "

In his deposition, Mr. Mayfield said he had last seen Ms. Edwards at 7:45 on the night of her murder. As he and his wife arrived home from dog obedience school, Ms. Edwards drove up behind them.

Mr. Mayfield said he and Ms. Edwards spoke briefly, but he did not say what the two discussed and Mr. Cook's attorneys didn't ask.

After leaving, Ms. Edwards stopped by the home of another university employee, Dr. Andrew Szarka. According to him, Ms. Edwards said she had told Mr. Mayfield that she was going to date other men and that he had become angry.

'He was pretty angry'

The morning after the attack, Ms. White, the librarian, drove Mr. Mayfield to two hospitals and the police station to find Ms. Edwards, she said in an interview and affidavit. Unsuccessful, they went to the Embarcadero.

As they sat in the car watching police, Mr. Mayfield said something that unnerved her, Ms. White recalled.

"He just became angry and said that when she tried to commit suicide, it cost him his job and ... pretty angry over that," Ms. White said. "He said: 'She ruined me. Her attempted suicide ruined me and cost me my job.' "

Mr. Mayfield spoke to police that afternoon. He told them about the affair and said he was home when the murder occurred. He agreed to take a polygraph.

However, Mr. Mayfield's attorney later told police that his client would not take a police polygraph. He also told police not to question Mr. Mayfield, his wife, Elfriede, or his other alibi witness, Luella Frances Finley, who was raised as a daughter by the Mayfields.

Mrs. Mayfield and Miss Finley were not only alibi witnesses; they were, at one time or another, suspects themselves, according to tran-

Please see DETAILS on Page 28A.

A CASE OF INCONSISTENCIES

Kerry Max Cook (pictured) has been on death row 14 years for the 1977 slaying of Linda Jo Edwards. But investigators have recently questioned James Mayfield, Edwards' former lover. During its four-year investigation of the case, *The Dallas Morning News* has uncovered discrepancies in the evidence used to convict Cook:

- Two key prosecution witnesses — including a prisoner to whom Cook purportedly confessed — later recanted their testimony.
- Prosecutor Michael Thompson withheld evidence favorable to Cook and misled the judge and jury on crucial facts. Thompson committed suicide three months after the trial.
- The most glaring contradiction in the prosecution's case against Cook came in the trial testimony of Edwards' roommate.

THE ROOMMATE'S STATEMENT TO POLICE

Paula Rudolph shared an apartment with Edwards for about 10 days before the murder. What follows is an excerpt from Rudolph's sworn statement to police given hours after Edwards' body was discovered in the apartment on June 10, 1977:

" I pushed the door open and stepped in and noticed a figure jump behind the door in Linda's room. I remember the figure had silver hair cut in a medium, touching-the-ear fashion that men wear. . . .The figure was sleek and slender and moved quickly behind the door and closed it. I knew that Linda had been seeing my boss, Jim Mayfield. My first impression on seeing the figure was that it was he even though I did not see the facial features nor hear him speak. . . . I called out, 'Don't worry, it's only me.' "



Cook's driver's license photo taken the day Edwards' body was found.

THE ROOMMATE'S TRIAL TESTIMONY

One year later, Rudolph testified in Cook's murder trial that she had seen Cook, not Mayfield, in the apartment the night of the murder. She explained the change by saying that she had a year to think about whom she had seen. On cross-examination, a defense attorney asked Rudolph whether she was saying that her memory had improved. She replied:

"I would not say perhaps that recall is any better, no. I would say that being able to stand back and take a logical look at something, rather than reacting emotionally based on completely preconceived ideas, would enable one to make a better interpretation of a perception, or almost anything for that matter."

The Dallas Morning News

Details surface involving grisly 1977 E. Texas slaying

Continued from Page 18A.

scripts of secret grand jury testimony obtained by *The News*.

The transcripts show that police theorized motives for each but cleared them. Grand jurors were never told why.

Tyler police Detective Eddie Clark told grand jurors that police originally thought Mr. Mayfield killed Ms. Edwards because the wounds "are all sexual reaction spots."

But he used the same reasoning for speculating that Mrs. Mayfield was the attacker. The crime was "something a woman would commit," he said. Grand jurors weren't told that Mrs. Mayfield was never questioned by police.

The detective testified that Miss Finley had been angry at Ms. Edwards "for taking her father away" and had publicly threatened to kill her.

Police had questioned Miss Finley for suspicious behavior, the officer said. Witnesses reported that the week Ms. Edwards was hospitalized for her suicide try, Miss Finley questioned Embarcadero residents about a "homicide" involving Mr. Mayfield and Ms. Edwards.

Detective Clark told grand jurors that after questioning Miss Finley, police "felt reasonably sure" she wasn't the killer.

The former Miss Finley, who now uses the name Frances Raitano, said in an interview last October that she never carried out her threats to kill Ms. Edwards.

Montgomery County court records show that in 1985, she pleaded guilty to aggravated assault after shooting her first husband. She was sentenced to five years of probation and given deferred adjudication.

Harris County court records show that last year, she was charged with making terroristic threats against her brother, Charles Edgar Finley, 32, of Houston. When he failed to appear in court, however, she was acquitted, said Assistant Harris County District Attorney Kristen Pain.

Mr. Dobbs said he hopes to speak with Mrs. Raitano, 31, and Mrs. Mayfield. Neither could be reached for comment for this article.

The investigation

Although the victim and prime suspect had worked at the university library, police did little investigation there, according to sworn testimony, documents and interviews with university employees.

"Not only did they not question any of us in the library, they didn't go to her office or check her desk," said Ms. White. "We didn't understand why they ignored everyone at the university, people who knew Linda and Mayfield."

Tyler police have declined to discuss their handling of the case. Others, including a retired Texas Ranger, have defended the investigation as thorough.

That belief is strongly disputed by Mr. McCloskey, whose work with private detective Richard Reyna of Conroe helped prove the innocence of former Texas death row inmate Clarence Brandley and former convicted armed robber Joyce Ann Brown of Dallas.

Mr. Cook had been staying temporarily with another man at the Embarcadero. He was arrested in Port Arthur several weeks later after the man told police that Mr. Cook matched a psychological profile police had of the killer.

Police later matched his fingerprints to one found on the outside of the victim's apartment. At Mr. Cook's 1978 trial, prosecutors said he killed Ms. Edwards in a homosexual frenzy brought on by watching the movie *The Sailor Who Fell From Grace With the Sea*.

The fingerprint was the only physical evidence against Mr. Cook, now 35. The rest of the state's case consisted of an alleged jailhouse confession, a questionable eyewitness identification and circumstantial evidence.

Smith County prosecutors are reviewing old and new evidence in the case in an attempt to decide whether Mr. Cook should be retried. They also have asked the U.S. Supreme Court to reinstate the conviction and death sentence.

Mr. Dobbs said he is trying to keep an open mind about the case and has no deadline for completing the review.

He said the review has also raised new questions about Mr. Cook. He said prosecutors have talked to a Dallas man who said he had known Mr. Cook before the crime. The man said Mr. Cook kept a *Playboy* centerfold from which the woman's genitals had been cut out.

Suspicious book

Tales of photos of sexually mutilated women have long surrounded the case. A day or so after Ms. Edwards was killed, Dr. Mears, the psychology professor, told police of a book he had found a year earlier in the library.

He discussed the book in sworn statements in 1988 and 1991. The book, *The Sexual Criminal*, was written by Dr. de River, a psychiatrist who once led the Los Angeles Police Department's sex crimes unit.

The book, Dr. Mears said, was "made up almost exclusively of police photographs of the mutilated body parts of the victims."

The professor said he had been curious why the book, published in 1949, was in the library, and he sought to find out who ordered it. Library workers told him Mr. Mayfield had ordered it, Dr. Mears said in his affidavits.

He said that after the murder, he asked Mr. Mayfield about the book. "He looked worried and said, essentially, 'I have more books like that one, too,' " Dr. Mears said in his 1988 affidavit.

Mr. Dobbs said he investigated the library's purchase of the book and found "nothing the slightest bit suspicious" about it. He said that when he spoke to Mr. Mayfield, the former dean said he had no knowledge of the book.

In an interview and in her affidavit, Ms. White said that Dr. Jerry Landrum, a Tyler psychologist, showed her the book after the murder. He had drawn up the psychological profile of the killer's traits that police had used in their investigation, he told the grand jury.

Ms. White said Dr. Landrum showed her the book and noted startling similarities between cases in it and the murder of Ms. Edwards.

"He did flip through the book and told me there was a case in it, almost a textbook of Linda's murder," Ms. White said in an interview. She said Dr. Landrum told her that the book — and Mr. Mayfield's link to it — was a reason police suspected Mr. Mayfield in the murder, but they couldn't disprove his alibi.

Mr. Brooks, who spent 21 years with the Los Angeles Police Department before becoming an FBI unit chief, said a killer trying to use Dr. de River's book to camouflag real motive behind a killing would have difficulty controlling the killing "frenzy."

"Even if they're trying to copy Dr. de River's book, it's a frenzy and you lose a lot of control," said Mr. Brooks, who is now retired. "You're not looking where you're stepping or where you put your hands. One of the first things I would do is check the bathrooms to see if there was any evidence of cleanup."

There wasn't. The only blood outside Ms. Edwards' room was a small drop near the patio door. The apartment's cleanliness was "one of the things that we really couldn't figure out," Detective Clark told grand jurors.

The man Mr. Cook had stayed with never reported seeing any blood. Mr. Dobbs said there's no record that police searched nearby apartment that Mr. May had rented for his brief stay with Edwards.

Why police didn't check the apartment, Mr. Dobbs said, "is a damn good question."

BEST AVAILABLE COPY